

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,	:	Case No.: 1:20-CR-00290-PAG-1
	:	
Plaintiff,	:	
	:	
	:	JUDGE PATRICIA A. GAUGHAN
vs.	:	MAG. JUDGE THOMAS M. PARKER
	:	
BRANDON MICHAEL ALTHOF LONG,	:	
	:	
	:	
Defendant.	:	

**DEFENDANT BRANDON MICHAEL ALTHOF LONG'S
RESPONSE TO GOVERNMENT'S MOTION FOR PRETRIAL DETENTION**

Now comes the Defendant, **BRANDON MICHAEL ALTHOF LONG**, by and through his undersigned counsel, and for his Response to the Government's Motion for Pretrial Detention, states as follows:¹

A. Brandon Michael Althof Long Was Never Arrested In Cleveland.

As more fully set forth in Defendant Althof Long's Supplemental Brief in Support of Bond (Doc. No. 14), Cleveland Police Detective Habeeb from the Intelligence Unit, did not arrest Mr. Althof Long. Mr. Althof Long was never told he was under arrest; he was never placed in handcuffs; he was never secured in the back of a police vehicle. He was patted down, and his car keys were never taken from him; he was ordered to stand by a building, to which he complied.

¹ Defense counsel has already briefed many of the bond issues raised by the Government in Defendant Brandon Michael Althof Long's Brief in Support of Bond (Doc. 5) and Defendant Brandon Michael Althof Long's Supplemental Brief in Support of Bond (Doc. 14). Defendant incorporates those Briefs by reference, as if fully set forth herein, to avoid redundancy.

The “arrest” that the Government refers to, arises from the reasonable person, objective test, set out in *Miranda v. Arizona*, 384 U.S. 436 (1966). “Would a reasonable person believe, based on all of the circumstances that he or she was under arrest or its equivalent?” *State v. Warrell*, 41 Ohio App.3d 286, 287 (1987) citing *Burkemer v. McCarty*, 486 U.S. 420 (1984). “*Miranda* will apply even if the formalities surrounding an arrest have not yet occurred.” Katz, *Ohio Arrest, Search and Seizure*, 2006 Edition, p. 467. “Relevant inquiries are whether the suspect is free to leave the scene, the purpose, place, and length of the questioning, and whether a reasonable person in the suspect's position would have considered himself to be in custody.” *State v. Wilson*, 76 Ohio App. 3d 519, 522 (1991), citing *United States v. Goudreau*, 854 F.2d 1097, 1098 (8TH Cir., 1988).

Based on the above set forth reasonable person, objective analysis, yes, Brandon Michael Althof Long was not free to leave the one-way East 8th Street Alley, where Detective Habeeb patted him down, and ordered him to stand at a building, without handcuffs, without being secured in the back of a police vehicle, without his car keys being taken from him, and without being told he was under arrest.

B. Just As CPD Detective Habeeb Was In The Best Position To Assess Brandon Michael Althof Long Posed No Threat Or Danger To Cleveland Police, Magistrate Judge Lanzillo Was In The Best Position To Assess Co-Defendant Poland's Danger To The Community.

The facts being submitted by the Government against Defendant Brandon Michael Althof Long, are identical to the matters that Magistrate Judge Lanzillo heard, at co-defendant Poland's June 10, 2020 preliminary hearing.²

² Co-defendant Poland's preliminary hearing transcript is available to this Court, for whatever assistance it may provide. The preliminary hearing transcript is not being attached to this Response, but is available to this Honorable Court, via email, and defense counsel will file it of Record in this case, should the Court desire.

After the preliminary hearing, Mr. Poland was granted a bond, with conditions, including GPS monitoring.³ Because the operative facts against co-defendant Poland were identical to the operative facts being proffered by the Government against Mr. Althof Long here, this Court's determinations regarding Mr. Althof Long's detention or bond, should weigh heavy in favor of Mr. Althof Long being released on a bond, with conditions similar to co-defendant Poland.

Respectfully submitted,

/s/ - Mitchell J. Yelsky, Esq.

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CERTIFICATE OF SERVICE

On this 18th day of June, 2020, the undersigned hereby certifies that a true copy of the foregoing has been filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system and/or via regular United States mail, if required. Parties may access this filing through the Court's system.

/s – Mitchell J. Yelsky, Esq.

MITCHELL J. YELSKY, ESQ.

³ Attached hereto as Exhibit "A".